

Federal Housing Finance Board

§ 908.44

that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice that is not denied in the answer is deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer shall set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of such respondent's right to appear and contest the allegations in the notice. If no timely answer is filed, the Finance Board's counsel of record may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the presiding officer shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Board of Directors based upon a respondent's failure to answer shall be deemed to be an order issued upon consent.

§ 908.42 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented by the Finance Board prior to the scheduling conference held in accordance with § 908.53, or at any stage of the proceeding with the permission of the presiding officer for good cause shown. The respondent must answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten (10) days after service of the amended notice, whichever period is longer, unless the Board of Directors or the presiding officer orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing

by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the notice or answer, and no formal amendments shall be required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the presiding officer may admit the evidence when admission is likely to assist in adjudicating the merits of the action. The presiding officer will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the presiding officer that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.

§ 908.43 Failure to appear.

Failure of a respondent to appear in person or by a duly authorized representative at the hearing constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the presiding officer shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice.

§ 908.44 Consolidation and severance of actions.

(a) *Consolidation.* On the motion of any party, or on the Finance Board's or the presiding officer's own motion, the presiding officer may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice. In the event of consolidation under this section, appropriate adjustment to the pre-hearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The presiding officer may, upon the motion of the Finance